

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00681/2017

Date of CAV : 13-11-2018
Date of Order : -11-2018

Between :

N. Suresh Kumar S/o N.Rama Subbaiah,
Aged 40 years, Occ : PA, Cuddapah HO,
Cuddapah Division, Cuddapah-516 001 (AP).Applicant

AND

1. Union of India rep by
The Chief Postmaster General,
AP Circle, Vijayawada-520 013 (AP).
2. The Director, Postal Services,
O/o the Postmaster General,
Kurnool Region, KURNOOL-518 002 (AP).
3. The Superintendent of Post Offices,
Cuddapah Division, Cuddapah-516 01 (AP). ...Respondents

Counsel for the Applicant: Mr. B. Gurudas

Counsel for the Respondents : Mrs. K. Rajitha, Sr.CGSC

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985, to call for the records pertaining to the impugned Memos (i) No. B/PF/NSK/2015, dated 22.03.2016; (ii) No. B/PF/NSK/2015, dated 30.04.2016; (iii) B/PF/NSK/2015, dated 16.08.2016 and declare the same as illegal, arbitrary and against the rules and principles of natural

justice and in violation of the provisions of the Constitution, set aside and quash the said illegal penalties awarded to the Applicant by the respondents with consequential benefits and pass such other order or orders as the Tribunal deems fit and proper in the circumstances of the case and in the interest of justice.

2. The brief facts of the case are that, the applicant is challenging the penalty of withholding of one increment for a period of two years without cumulative effect awarded by the 2nd respondent through memo No. Inv./13-NSK/2016, dated 16.08-2016 modifying the penalty of withholding of one increment for a period of one year without cumulative effect awarded by the 3rd respondent. The 3rd Respondent issued charge memo No. B/PF/NSK/2015, dated 22.03.2016 under Rule-16 of CCS(CA) Rules, 1965, for not handing over the charge to another postal assistant deputed without orders from competent / any authority. He has awarded the penalty of withholding of increment for a period of one year without cumulative effect vide memo No. B/PF/NSK/2015, dated 30.04.2016 without considering the contentions of the applicant made through representation dated 16.04.2016.

4. Aggrieved upon the unjust penalty imposed by the 3rd respondent the applicant preferred appeal dated 07.06.2016 to the 2nd respondent, who instead of considering the appeal issued notice No. Inv./13-NSK/2016, dated 11.07.2016 proposed to modify the said penalty to that of withholding of increment for three years without cumulative effect and required the

applicant to make such representation as he may wish against this proposal. The applicant submitted a detailed representation, dated 20.07.2016 in response to the notice. The 2nd respondent without considering the submissions made by the applicant, modified the punishment of one increment postponed for a period of one year without cumulative effect to that of withholding of one increment for a period of two years without cumulative effect vide memo No. Inv./13-NSK/2016, dated 16.08.2016. The modified penalty is too harsh and disproportionate to the gravity of offence. Thus, there was no loss or inconvenience to the department. Hence awarding too harsh penalty without establishing the misconduct is illegal, arbitrary and against the settled law. The modified punishment is heavy and disproportionate to the gravity of offence. Hence this application.

5. Respondents have filed reply statement stating that the Supdt., of Post Offices, Cuddapah has directed the Postmaster, Cuddapah HO vide letter No.B/Staff/Misc, dated 14.12.2015 to depute a suitable hand to Madhavaram SO and also RIMS SO who was not trained in the finale, as the officials working as Madhavaram SO and RIMS SO were trained in finale and their services are required at Y.M.Palle SO and R.V.Nagar SO applied for leave.

6. Accordingly the Postmaster, Cuddapah HO deputed Smt G.Vijayalakshmi, PA, Cuddapah HO to RIMS NTDO for the relief of Sri N.Suresh Kumar who was directed to join at R.V.Nagar SO. Smt.G.Vijaya Lakhmi, PA, Cuddapah HO proceeded to RIMS SO on 15.12.2015 in the

forenoon and asked Sri N. Suresh kumar, to hand over the charge of SPM, RIMS SO. But the applicant refused to five charge. She came to the Divisional office and informed that the applicant has refused to give charge, though she informed the applicant that the letter was already sent to Sri N. Suresh kumar, PA, Cuddapah HO on deputation at RIMS SO through Registered post and the same was also communicated to the email ID of the SPM, RIMS SO at 12.08 hrs on 15.12.2015.

7. The Respondents state that Smt. G. Vijayalakshmi, PA, Cuddapah HO again proceeded to RIMS NDTSO in the afternoon of 15.12.2015 and asked Sri N. Suresh kumar, PA, Cuddapah HO on deputation at RIMS SO to hand over the charge. But again he refused to hand over the charge of SPM, RIMS SO to hand over the charge. But again he refused to hand over the charge of SPM, RIMS SO though Smt. G. Vijaya lakshmi informed the applicant about the directions of SPOs. Smt. G. Vijayalakshmi, PS came back to Cuddapah HO and joined at Cuddapah HO. The manpower of one official was wasted on 15.12.2015.

8. The Respondents further state that Sri N. Suresh kumar, PA, Cuddapah HO was asked to submit his explanation vide office letter No. B/Staff/Misc, dated 21.01.2016 as to why disciplinary action should not be taken against him for not adhering the directions of SPOs though the information was sent through email on 15.12.2015 at 12.08 pm.

9. The Respondents further state that the applicant has submitted his

representation dated 30.01.2016 which was received at this office on 01.02.2016. As the explanation of the official was not convincing, Rule-16 charge sheet was prepared and sent to the official. The version f the applicant was not convincing and one lady official went to RIMS TSO which is about 7 kilometres from her place to relieve him at RIMS in the forenoon and afternoon. But he refused to give charge though the orders through e-mail were given to the rimdndtso@gmail.com. As his attitude and behaviour established him to unbecoming of a Government servant, the punishment of one increment of the applicant was postponed for a period of one year without cumulative effect vide SPos proceedings No. B/PF/NSK/2015, dated 30.04.2016.

10. The Respondents further state that the applicant did not contact the Divisional Office or Cudapah HO for his clearance of doubt by coming outside of the office/RIMS Hospital as was done by the applicant on 16.12.2015. The applicant submitted his representation dated 16.04.2016 and the disciplinary authority was ordered that one increment of the applicant is postponed for a period of one year without cumulative effect vide memo No. B/PF/NSK/2015, dated 30.04.2016.

11. The Respondents further submit that aggrieved on the penalty awarded by the SPos, Cuddapah, the applicant preferred appal dated 07.06.2016 to the DPS Kurnool. On receipt of the appeal by the applicant, the DPS, Kurnool issued notice to the applicant vide letter No. INV/13-NSK/2016, dated 11.07.2016 proposing to enhance the penalty and

to submit his representation if any. The applicant submitted his representation dated 20.07.2016 to the DPS, Kurnool for modification of his penalty. The DPS, Kurnool has disposed the appeal preferred by the applicant by enhancing the penalty of withholding of one increment for a period of one year without cumulative effect to that of withholding of increment for a period of two years without cumulative effect vide memo No.INV/13-NSK/2016, dated 16.08.2016 as the arguments put forth by the appellant were found to be not convincing. In view of these submissions, Respondents pray for dismissal of the O.A.

12. I have heard Mr.B.Gurudas, learned counsel for the applicant and Mrs.K.Rajitha, learned Sr Central Govt., Standing Counsel for Respondents.

13. The settled position of the law is that the Tribunal should not go into evidence but the Tribunal has got scope to examine the decision making process besides that, the Tribunal cannot substitute its opinion in place of the opinion given by the Disciplinary Authority / Appellate Authority while imposing the punishment. But this Tribunal while examining the legality and justification of imposing the punishment awarded, if it is found that the said punishment is shockingly disproportionate to the misconduct alleged against the applicant / delinquent, this Tribunal can interfere with the said punishment. This Tribunal can also examine, if the case is of 'no evidence' or if some evidence has been adduced in the departmental proceedings to prove the charges levelled against the delinquent (applicant) preponderance of probability, taking into consideration the principles of

law, this Tribunal has gone to the material o record for the purpose of ascertaining that there was any force at all with the misconduct alleged against the applicant has been proved even in the standard of preponderance of probability. It is admitted fact that the applicant in his capacity as Postal Assistant was sent on deputation to Madhavaram SO and RIMS SO. It is alleged that the applicant did not hand over charge to one Smt. G. Vijayalakshmi on 15.12.2015. It is the constant plead of the applicant that the said Mrs. G. Vijayalakshmi attended and came t the said Post Office on 15.12.2015 at 11.30 am without any written order directing the applicant to handover the charge to her and therefore the applicant was not in a position t hand over the chare. The document ie order dated 14.12.2015 vide Annexure-I passed by the Superintendent of Post Offices, Cuddapah Division directing the Postmaster, Cudapah HQ to relieve and direct suitably non financial trained officers to Madhavaram SO and RIMS SO and immediately on deputation one official was despatches on 15.12.2016 and received at Cuddapah office at 16.12.2015 as per the date seal affixed on it. The instructions under which the applicant could not hand over charge to Smt.G.Vijayalakshmi, PA, Cuddapah HO on 15.12.2016 have been elaborately mentioned by the applicant in his letter dated 30.01.2016 address to Supdt., of Post Offices, Cuddapah Division. He has also categorically mentioned that there has been no written direction from the Regional Office on 15.12.15 directing that he should hand over charge to Smt. G. Vijayalakshmi. Thus there is no evidence at all to show that the order dated 14.12.2015 passed by the Supdt. Of Post Offices was received by applicant prior to 16.12.2016. Besides that the most important aspect in

this case is that there is no averment from the side of the Respondents to show that any written direction was given authorizing Smt. G. Vijayalakshmi to take over chare or directing the applicant to hand over charge to her, it cannot be said by any stretch of imagination that the applicant had violated any direction of the Respondents. In the absence of any such direction, the applicant could not have official hand over charges to Smt. G. Vijayalakshmi as that would not have been proper and legal. Therefore this Tribunal finds that there is absolutely no evidence that the applicant had violated the orders of the superiors by not handing over the charge to Smt. G. Vijayalakshmi. Hence the allegation made against the applicant is not at all been proved. Finding to the contrary given by the Disciplinary Authority and subsequently by the Appellate Authority is based on record and the same shows clearly non application of mind. In the absence of any evidence at all, the applicant could not have been imposed with any punishment. Accordingly the impugned orders No. B/PF/NSK/2015, dated 30.04.2016, No. B/PF/NSK/2015, dated 16.08.2016 are quashed and set aside with all consequential service and financial benefits within a period of three months from the date of receipt of a copy of this order.

14. With the above directions, the OA is allowed. No order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : November, 2018.

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